

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/boa/>

CASE NO. A-6497

PETITION OF NANCY RAPER

OPINION OF THE BOARD

(Opinion Adopted July 13, 2016)

(Effective Date of Opinion: July 26, 2016)

Case No. A-6497 is an application for a variance necessary for the construction of a garage on an existing house. The construction, which is existing, requires a variance of one (1.00) foot as it is within six (6.00) feet of the side lot line. The required setback is seven (7) feet, in accordance with Section 59-7.7.1.D.2 of the Montgomery County Zoning Ordinance.

The Board of Appeals held a hearing on the application on July 13, 2016. Petitioner Nancy Raper appeared at the hearing and was represented by Kenneth Crickman, Esquire. Architect Christopher O. Collins, AIA, appeared as a witness for Ms. Raper.

Decision of the Board: Variance **GRANTED**.

EVIDENCE PRESENTED

1. The subject property is Lot 9, Block A, Chevy Chase Manor Subdivision, located at 3212 Cummings Lane, Chevy Chase, Maryland, 20815, in the R-60 Zone.
2. Ms. Raper testified that she purchased the subject property in 1986, and has lived there since that time. She testified that in 2013, she hired a builder to tear down and replace an open breezeway and one-car garage that had been attached to her house since before the time of her purchase.¹ She testified that the architectural drawings prepared in connection with that renovation were approved by Montgomery County, that the builder followed the approved plans, and that the County approved the completed structure. Ms. Raper testified that these plans

¹ The breezeway was replaced by an enclosed sunroom. See Exhibit 3.

were developed, implemented, and approved by the County using the survey she received in 1986 when she purchased the property. See Exhibit 5, Attachment A.

3. Ms. Raper testified that after her garage renovation was completed and approved by the County, the neighbor nearest her garage expressed concern that the garage may be too close to the side lot line. Ms. Raper testified that this caused her to seek a new survey of her property, which was performed in 2014. See Exhibit 5, Attachment B. Ms. Raper testified that the new survey indicated that her new garage encroached into the side lot line setback by approximately one foot. She testified that based on the 2014 survey, the demolished garage, which was constructed in 1949, must also have been located in the setback, as that survey does not show enough room for the garage to have been located in conformance with the required setback. Ms. Raper testified that she asked her builder to relocate the garage, but he refused.
4. Ms. Raper directed the Board to her written submission, indicating that it explains the reasons her property meets the standards for the grant of a variance. See Exhibit 3. She testified that most of the homes in her immediate vicinity have garages,² and thus that her construction conforms with the established historic or traditional development pattern of her street and neighborhood.

Mr. Raper testified that she explicitly instructed her architect and builder to make sure that they adhered to the required setbacks. Her written statement indicates that according to the 1986 survey, the breezeway and garage that she sought to replace were located in conformance with the required setbacks, and that she had requested that the rebuilt structures be located in the same place as the prior structures. See Exhibit 3. In response to a Board question, Ms. Raper testified that according to the 1986 survey, the new garage is located in accordance with the required setbacks.

Ms. Raper testified that she did not cause her new garage to be located in the setback, indicating that she blames the builder, and that the builder blames the 1986 survey. She suggested that a portion of the blame may also lay at the feet of the County, which did not perform a wall check and which also relied on the 1986 survey in approving this construction. Ms. Raper testified that allowing her new garage to remain will not adversely affect her neighborhood or neighbors, and that reducing its size by one (1) foot will render it unusable for its intended purpose. She testified that she had discussed her plans with her neighbors on both sides, and that to the best of her knowledge, they did not oppose the grant of this variance.

5. In response to a Board question asking how the encroachment of her garage had come to the attention of the County, Mr. Collins testified that Ms. Raper's

² Her written statement indicates that the two properties adjacent to hers to the west, along Camalier Drive, and the six properties adjacent to hers to the east, along Cummings Lane, all have garages.

neighbor's concern about a possible encroachment had caused Ms. Raper to seek confirmation, via the new survey, that her construction was correctly located. He testified that upon learning that her new garage encroached on the side setback, Ms. Raper applied for a variance because she wanted to avoid issues down the road, in the event that she wanted to modify or sell the property. Ms. Raper confirmed that she had, essentially, "turned herself in" to the County in order to avoid any future problems with the location of her garage.

Mr. Collins testified that this house's garage has always been less than seven (7) feet from the side lot line. He testified that the County's Department of Permitting Services relied on the 1986 survey in approving this construction. Finally, he testified that the 1986 survey was done using metes and bounds, whereas the 2014 survey was done using GPS, which he described as more accurate.

6. In addition to being concerned about the setback encroachment itself, Mr. Collins testified that he was also concerned about fire safety, since that was one of the purposes for setbacks. He testified that the distance between Ms. Raper's garage and the house next door was 18 feet, more than the 14 foot minimum separation that he said would otherwise be dictated by the setbacks, and more than needed for fire safety. Mr. Collins testified that if the Board were inclined to grant the variance but wanted assurance of fire safety, he could specify a fire-resistant assembly using gypsum board and cement board that would reduce fire risk in the event that the structure on the neighboring property were moved closer to the garage on the subject property.
7. Ms. Raper's written Justification Statement is included in the record at Exhibit 3 and sets forth additional evidence and argument in support of her variance request.

FINDINGS OF THE BOARD

Based on the Petitioner's binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-7.3.2.E as follows:

1. *Section 59.7.3.2.E.2.a. one or more of the following unusual or extraordinary situations or conditions exist:*

Section 59.7.3.2.E.2.a.i exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary conditions peculiar to a specific property;

The Board finds that the 1986 and 2014 surveys of this property yielded different measurements of the distance between both the old and new garages, and the property's northwest side lot line. See Exhibit 3. The Board further finds, based on the testimony of record, that according to the 1986 survey, which was used for the (re-)construction of this garage, the garage and other improvements on this property conform with the

required setbacks. The Board finds that while Ms. Raper did nothing to change the dimensions of her property or the location of her house thereon, what Mr. Collins described as the more accurate surveying techniques (i.e. GPS) employed in 2014 effectively changed both, at least with respect to the relationship between Ms. Raper's house and garage and the side lot line. The Board finds that this is an extraordinary condition peculiar to this property.

Section 59.7.3.2.E.2.a.v the proposed development substantially conforms with the established historic or traditional development pattern of a street or neighborhood;

The Board finds, based on the testimony of Ms. Raper and her written Justification Statement, that most of the homes in her immediate vicinity have garages, and that the (now demolished) garage that was previously located on this property, in the location of the current garage, had been there since 1949. See Exhibit 3. Thus the Board finds that the grant of this variance would substantially conform with the established historic or traditional development pattern of this street or neighborhood.

2. *Section 59.7.3.2.E.2.b the special circumstances or conditions are not the result of actions by the applicant;*

Ms. Raper purchased this property, which contained a home and garage, attached by a breezeway, in 1986. According to a survey done at that time, the garage was located in conformance with the required seven (7) foot side setback. In 2013, Ms. Raper had the existing garage replaced with a new garage, in the same location. Based on the testimony of Ms. Raper, the Board finds that when the new garage is compared against the 1986 survey, it would have met the required setbacks, but when the 2014 (after-the-fact) survey is used, that is no longer the case. The Board finds that this difference in measurement between the two surveys is not the result of actions by Ms. Raper but rather the result of improving technology, and that were it not for Ms. Raper's desire to make certain that her new garage conformed with the required setbacks after her neighbor's inquiry, this encroachment would never have been identified or brought to the attention of the County.

The Board further finds that Ms. Raper was not responsible for the location of the garage originally constructed on this property, or for the fact that most surrounding properties also have garages.

3. *Section 59.7.3.2.E.2.c the requested variance is the minimum necessary to overcome the practical difficulties that full compliance with this Chapter would impose due to the unusual or extraordinary situations or conditions on the property;*

The Board finds that the requested variance is minimal in that it allows this garage to remain in the same location, relative to this property's side lot line, that a garage has always been, a location which, but for the 2014 survey, would have been viewed as compliant with the required side lot line setback. The Board further finds that without the grant of this variance, Ms. Raper would either have to remove this garage or reduce its size. The Board finds that removing the garage would disrupt the established historic or

traditional development pattern of this street or neighborhood, and that, per the testimony of Ms. Raper, reducing the size of this garage to comport with the side setback would render it unusable for its intended purpose. Thus the Board finds that compliance with the required side setback would pose a practical difficulty for Ms. Raper, and that the grant of this variance is the minimum necessary to allow Ms. Raper to have a functioning garage, as others in her neighborhood have and as her property has had since 1949.

4. *Section 59.7.3.2.E.2.d the variance can be granted without substantial impairment to the intent and integrity of the general plan and the applicable master plan;*

The Board finds that the construction of a garage continues the residential use of this home and is therefore consistent with the goal of the Bethesda Chevy Chase Master Plan to "protect the high quality of life, the existing residential character, and the natural environment throughout the area."

5. *Section 59.7.3.2.E.2.e granting the variance will not be adverse to the use and enjoyment of abutting or confronting properties.*

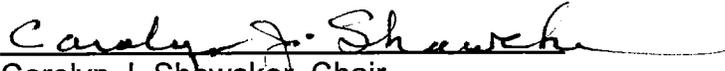
The Board finds that allowing this newly constructed garage to remain in the same site on this property where a garage has historically been located will not infringe on the use and enjoyment of abutting or confronting properties. The Board notes that Ms. Raper testified that she had spoken to her abutting neighbors and was not aware of any opposition to her variance request, and that the record contains a letter of support from her confronting neighbor. The Board further notes that in order to eliminate any fire safety concerns that neighbors may have as a result of the siting of this garage in the side setback, it will be conditioning the grant of this variance on compliance by Ms. Raper with those building code provisions governing fire resistant construction at a zero lot line separation.

Accordingly, the requested variance to allow this garage to remain in its current location, approximately six (6) feet from the side lot line, is **granted**, subject to the following conditions:

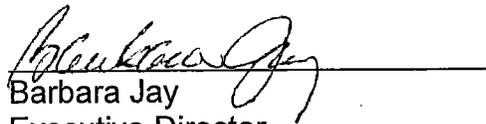
1. The Petitioner shall be bound by all of her testimony and the testimony of her witness, and by all exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting this variance; and
2. The encroaching portion of this garage must be made to comply with the Montgomery County Building Code as if this were zero lot line construction.

Therefore, based upon the foregoing, on a motion by Edwin S. Rosado, seconded by John H Pentecost, Vice Chair, with Carolyn J. Shawaker, Chair, Stanley B. Boyd, and Bruce Goldensohn in agreement, the Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled petition.


Carolyn J. Shawaker, Chair
Montgomery County Board of Appeals

Entered in the Opinion Book
of the Board of Appeals for
Montgomery County, Maryland
this 26th day of July, 2016.


Barbara Jay
Executive Director

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book. Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County, in accordance with the Maryland Rules of Procedure. It is each party's responsibility to participate in the Circuit Court action to protect their respective interests. In short, as a party you have a right to protect your interests in this matter by participating in the Circuit Court proceedings, and this right is unaffected by any participation by the County.

See Section 59-7.3.2.G.1 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.